Annex C

CASE SUMMARY

Complaint against the Inland Revenue Department for committing the same mistake for two consecutive years of assessment

The Complaint

The complainant complained that the Inland Revenue Department (IRD) had made the same mistake in two consecutive years of assessment in 1997/98 and 1998/99 by including in the assessment of her salaries tax the income of a person who had used her name and identity card number.

Information Provided by the Complainant

2. The complainant objected to IRD in February 1999 about her salaries tax assessment for the year 1997/98. Upon investigation, IRD found that the assessment was wrong because a company had reported that salary had been paid to a person using the same name and identity card number as the complainant's. IRD later corrected the 1997/98 assessment for the complainant. However, the Inland Revenue Ordinance prevented the department from disclosing information about the person allegedly using the complainant's identity. .

3. The same mistake was repeated in the complainant's salaries tax assessment for the year 1998/99. Feeling aggrieved, the complainant complained to The Ombudsman.

Observations and Opinions

4. IRD stated that the complainant was taxed according to the income she earned from Company A as reported in her Tax Return – Individuals for the year 1997/98. On the other hand, Company B reported that salary had been paid to a person with the same name and identity card number as the complainant's. As a result, the computer assessing system automatically generated a Notice of Additional Assessment for the complainant for the year 1997/98.

5. In December 1998, the complainant told IRD that she was not employed by Company B and raised an objection to the additional assessment. IRD noted that loss of the complainant's identity card had been reported. The complainant later reported the matter to the police.

6. In view of the complainant's objection to the additional assessment,

IRD approved a deferred payment of the tax in dispute and made inquiries from Company B. Having examined the information furnished by Company B, IRD believed that the person employed by Company B had made use of the complainant's lost identity card. IRD therefore annulled the additional assessment in February 1999 and gave an explanation in writing to the complainant. However, IRD could not disclose the information about the person involved because of the Inland Revenue Ordinance.

7. Afterwards, IRD had adopted a series of measures to prevent similar mistakes from being made in future salaries tax assessment of the complainant. These measures included endorsing remarks in IRD files on Company B, opening a permanent file for the complainant, categorising her case as unsuitable for automatic computer assessment, and placing an eye-catching label on the cover of the file so as to remind the staff in charge of the case that the assessment must be vetted and approved by an Assessor.

8. In the 1998/99 assessment year, Company B reported to IRD again that salary was paid to a person with the same name and identity card number as the complainant's. As the above measures had been taken by IRD, the computer assessing system did not automatically generate an additional assessment to the complainant, but generated an income discrepancy advisory slip for the assessing staff to follow up the case. Unfortunately, the staff responsible for handling the income discrepancy advisory slip overlooked the fact that the complainant's case warranted special handling and prepared a Notice of Additional Assessment which was sent to the complainant in January 2000. In response, the complainant wrote to IRD to raise an objection to the additional assessment. IRD later annulled the additional assessment and sent the complainant a written explanation and an apology. Again IRD refused to disclose information about the imposter because of the Inland Revenue Ordinance.

9. The Ombudsman concluded that this case involved negligence on the part of IRD staff and found the complaint **substantiated**.

10. This Office notes that Section 4 of the Inland Revenue Ordinance on official secrecy prohibits IRD from disclosing information that has come into the department's possession, even when suspect criminality is involved. Legal advice obtained by IRD has confirmed this.

11. However, as this Office believed that criminal acts had been committed in this case, reports were made to the Hong Kong Police Force and the Immigration Department respectively under Section 15(2)(b) of The Ombudsman Ordinance.

12. The Ombudsman was pleased to note that IRD had corrected the mistake, apologised to the complainant, reminded the staff about procedures for handling similar cases, and would review the relevant departmental circulars.

The response of IRD

13. IRD accepted the findings in the Investigation Report. Pursuant to The Ombudsman's recommendation, the department was now reviewing the relevant circulars to strengthen the procedures for handling similar cases and would report to this Office about the progress.

Office of The Ombudsman
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